

BEFORE THE STATE BOARD OF HEARING AID DEALERS AND FITTERS

STATE OF IDAHO

ORIGINAL

In the Matter of the License of:

RICHARD J. DAVIS,
License No. H-11,

Respondent.

Case No. HAD-P3-04-99-008
HAD-P3-04-99-009

FINAL ORDER

THIS MATTER came on for hearing on March 6, 2001, before James P. Price, the designated Hearing Officer. The State appeared in person and by its attorney of record, Kirsten L. Wallace, Idaho Deputy Attorney General. Respondent, Richard J. Davis, appeared in person and by and through his attorney of record, Charles F. Peterson. Both parties presented witnesses, testimony, and documentary evidence. On September 24, 2001, the Hearing Officer submitted his Memorandum Decision and Recommended Order.

This matter then came before the Idaho State Board of Hearing Aid Dealers and Fitters at a regularly scheduled meeting of the Board on November 8, 2001. The Respondent, his attorney, and the State's attorney presented argument to the Board. The Board, having conducted an independent review of the record and having considered all evidence and arguments of counsel presented before the Hearing Officer, the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order and all other matters of record, and good cause appearing therefor, the Board unanimously adopted the following Order.

IT IS HEREBY ORDERED as follows:

1. That the Hearing Officer's Findings of Fact and Conclusions of Law are hereby adopted and incorporated herein by reference.

FINAL ORDER - 1.

2. That the Respondent's conduct has violated Idaho Code § 54-2912(b) as set forth in the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order. Pursuant to Idaho Code §§ 54-2912, 54-2914, and IDAPA 24.06.01.551, the Board possesses the authority to impose the following disciplinary sanctions upon the Respondent, Richard J. Davis:

a. Respondent shall pay a fine to the Board in the amount of: One Thousand Dollars (\$1,000.00) for engaging in unethical conduct in failing to refer the patient to a physician (Idaho Code § 54-2912(b)(3)); One Thousand Dollars (\$1,000.00) for violating 21 C.F.R. 801.421 by fitting the patient with a hearing aid without a medical evaluation that had been performed within six months prior to the fitting (Idaho Code § 54-2912(b)(13)); Two Hundred Fifty Dollars (\$250.00) for engaging in unethical conduct in failing to adequately perform pre-fitting and sound field tests (Idaho Code § 54-2912(b)(3)); Two Hundred Fifty Dollars (\$250.00) for failing to perform all necessary tests required by statute and regulation (Idaho Code § 54-2912(b)(5) & (13)); One Thousand Dollars (\$1,000.00) for engaging in unethical conduct (failing to meet the standard of care) in improperly fitting the patient with bi cros hearing aids (Idaho Code § 54-2912(b)(3)); One Thousand Dollars (\$1,000.00) for improperly fitting the patient with bi cros hearing aids (Idaho Code § 54-2912(b)(6) & (13)), for a total fine of Four Thousand Five Hundred Dollars (\$4,500.00).

b. The Respondent shall pay the costs and attorney's fees incurred by the prosecution in this matter, for a total amount due of Eleven Thousand Eighty-Seven and 40/100 Dollars (\$11,087.40).

c. That Respondent shall reimburse the patient for the costs of the hearing aid in the amount of Two Thousand Eight Hundred Ninety-Five Dollars (\$2,895.00).

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d. That Respondent shall pay the fines, costs and fees ordered in this matter to the Board within sixty (60) days from service of this Order.

3. This is the Final Order of the Board.

a. Any party may file a Petition for Reconsideration of this Final Order within fourteen (14) days of the service date of this Final Order. The Board will dispose of the Petition for Reconsideration within twenty-one (21) days of its receipt, or the Petition will be considered denied by the operation of law. (*See*, Idaho Code § 67-5247(4).)

b. Pursuant to Idaho Code §§ 67-5270 and 57-5272, any party aggrieved by this Final Order, or orders previously issued in this case, may appeal this Final Order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (i) a hearing was held; (ii) the final agency action was taken; or (iii) the party seeking review of this Final Order resides.

c. An appeal must be taken within twenty-eight (28) days: (i) of the service date of this Final Order; (ii) of any order denying petition for reconsideration; or (iii) of the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. (*See*, Idaho Code § 67-5273.) The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

4. The Bureau Chief of the Bureau of Occupational Licenses shall cause a true and correct copy of this Final Order to be served upon the Respondent's attorney and the State's attorney by mailing a copy to them at their addresses as provided.

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DATED this 6 day of December, 2001.

STATE BOARD OF HEARING AID DEALERS
AND FITTERS

By Charles R. Gasser
Dr. Charles R. Gasser, Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of December, 2001, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Charles F. Peterson
Hawley, Peterson & Merris
202 N. 9th, Suite 205
Boise, Idaho 83702
Attorneys for Respondent

☒ U.S. Mail
☐ Hand Delivered
☐ Federal Express
☐ Fax Transmission

Kirsten L. Wallace
Deputy Attorney General
Office of the Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

☒ U.S. Mail
☐ Hand Delivered
☐ Federal Express
☐ Fax Transmission

Rayola Jacobsen
Rayola Jacobsen, Bureau Chief

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